

[No. 52810-6-I. Division One. January 10, 2005.]

SILVERSTREAK, INC., ET AL., *Appellants*, v. THE DEPARTMENT OF LABOR AND INDUSTRIES, *Respondent*.

- [1] **Public Contracts — Construction Contracts — Prevailing Wages — Enforcement — Administrative Notice — Judicial Review — Governing Law.** Judicial review of an administrative notice of violation of the prevailing wage statute (chapter 39.12 RCW) is governed by the Administrative Procedure Act (chapter 34.05 RCW).
- [2] **Administrative Law — Judicial Review — Appellate Review — Record — Agency Record — In General.** An appellate court reviewing an agency adjudication sits in the same position as the trial court and applies the review standards of RCW 34.05.570(3) directly to the agency record.
- [3] **Administrative Law — Judicial Review — Appellate Review — Issues of Law — Standard of Review.** When reviewing an agency adjudication, an appellate court reviews questions of law de novo but will accord substantial weight to the agency's interpretation of the statutes that it administers.
- [4] **Administrative Law — Judicial Review — Mixed Question of Law and Fact — Standard of Review.** Upon judicial review of an administrative decision involving a mixed question of law and fact, a court determines the law independently and then applies the law to the facts as found by the administrative agency.
- [5] **Public Contracts — Construction Contracts — Prevailing Wages — Intended Beneficiaries.** The intended beneficiaries of the prevailing wage statute (chapter 39.12 RCW) are workers, not government contractors or their assignees.
- [6] **Public Contracts — Construction Contracts — Prevailing Wages — Scope — Incorporation of Materials Into Project — Necessity.** Under RCW 39.12.020 and WAC 296-127-018, a worker who delivers materials to the work site of a public works project is not entitled to be paid the prevailing rate of wages unless the worker also spreads, levels, rolls, or otherwise participates in any incorporation of the materials into the project. A worker's mere delivery of materials to the site, without more, is insufficient to qualify the worker to be paid the prevailing wage rate.
- [7] **Administrative Law — Rules — Construction — Meaning of Words — Absence of Administrative Definition — Resort to Dictionary.** When a word in an administrative rule is not defined by the rule or by the statute under which the rule was adopted, a court may resort to a dictionary to determine the meaning of the word.
- [8] **Administrative Law — Rules — Construction — Unambiguous Language.** When an administrative rule is unambiguous, a

court will assume that the rule means what it says and will not construe the rule beyond the plain meaning of its words.

- [9] **Administrative Law — Rules — Construction — Meaning of Words — Ejusdem Generis.** When a general term is in sequence with specific terms in an administrative rule, the rule of ejusdem generis holds that the general term is restricted to items similar to the specific terms.
- [10] **Public Contracts — Construction Contracts — Prevailing Wages — Scope — Incorporation of Materials Into Project — "Otherwise Participate[s]" — Scope.** For purposes of WAC 296-127-018(2)(a), which provides that a worker who delivers materials to a public works project site is entitled to be paid the prevailing rate of wages if the worker also performs any "spreading, leveling, rolling, or otherwise participate[s] in any incorporation of the materials into the project," the phrase "or otherwise participate[s] in any incorporation of the materials into the project" is limited by the more specific preceding terms to activities that are similar in kind to spreading, leveling, or rolling.
- [11] **Public Contracts — Construction Contracts — Prevailing Wages — Truck Drivers — Delivery of Materials.** Under RCW 39.12.020 and WAC 296-127-018, a truck driver who delivers fill materials to the site of a public works project is not entitled to be paid the prevailing rate of wages unless the driver performs some additional task, beyond the mere delivery of the materials, that incorporates the materials into the project in a manner that is similar to rolling, leveling, or spreading. The fact that the driver delivers the materials directly to the place where it is used at the work site, rather than to a central stockpile for later movement, thereby improving construction efficiency, is not dispositive as such act does not involve an incorporation of materials into the project that is similar to "rolling, leveling, or spreading." Where the driver remains in the truck and does not in any manner control the rate at which the materials are being deposited at the site, such as by the tailgate, belly dump, spreader box, or paving machine method of delivery, no additional task is performed that would qualify the driver to be paid the prevailing rate of wages.
- [12] **Statutes — Construction — Amendment — Judicial Amendment — Guise of Construction.** A court will not rewrite a statute in the guise of construing it.
- [13] **Public Contracts — Construction Contracts — Prevailing Wages — Rules — Construction — Liberal Construction Standard — Effect.** Notwithstanding the remedial purposes of the prevailing wage statute (chapter 39.12 RCW) and the charge that it be liberally construed, the plain language of rules adopted by the Department of Labor and Industries in furtherance of the statute cannot be ignored and must be given effect.

